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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,784	02/18/2004	Michael R. Carey	US20030479	2734

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WHIRLPOOL PATENTS COMPANY - MD 0750
Suite 102
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St. Joseph, MI 49085

EXAMINER

PERRIN, JOSEPH L

ART UNIT	PAPER NUMBER
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1746

MAIL DATE	DELIVERY MODE
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07/23/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/780,784

Applicant(s)

CAREY ET AL.

Examiner

Joseph L. Perrin, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 5, 7, 9, 12-25, 28, 29, 35 and 36 is/are pending in the application.
- 4a) Of the above claim(s) 9, 17 and 29 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 5, 7, 35 and 36 is/are allowed.
- 6) ☐ Claim(s) 12-16, 18-24 and 28 is/are rejected.
- 7) ☒ Claim(s) 25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 31 May 2007 have been fully considered but they are not fully persuasive.
2. Regarding the §102 & 103 rejections over HANSEN, applicant's arguments in view of the amendment are persuasive and the rejections are withdrawn.
3. Regarding the §102 rejection over UIHLEIN, applicant presents plural arguments for independent claims 12, 18 & 20.

Re claim 12, applicant argues that bin 48 of UIHLEIN "is an open top bin that does not define a shelf, nor does it allow a laundry basket to be placed thereon. The Examiner disagrees. The structure of UIHLEIN fully reads on the broadly claimed structure of a "shelf" and is fully capable of performing the intended use of allowing a laundry basket to be placed thereon. It is well settled that claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device is, not what a device does." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). (emphasis in original) Moreover, the Examiner notes that the claim is directed to a "support" with the intended use of being "for a laundry appliance". Thus, the recitation "laundry appliance" in claim 12 has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight

where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Re claim 18, applicant argues that UIHLEIN does not disclose a “horizontal shelf slidably attached to a drawer, or a recessed compartment removably held in said shelf.” The Examiner disagrees. Firstly, it is noted that the claimed drawer is immense in scope and readable on any drawer (i.e. not limited to laundry appliances). Secondly, the horizontal portions of bin 48 read on a horizontal shelf and the recessed portion of the bin is removably held. Accordingly, recitation of UIHLEIN reads on applicant’s claimed invention.

Re claim 20, applicant argues that UIHLEIN does not disclose a horizontally slidable shelf mounted to a drawer. The Examiner disagrees and submits that the bin 48 of UIHLEIN clearly includes horizontal portions and horizontally slides in the drawer. Thus, the structure of UIHLEIN reads on applicant’s claimed invention. Similarly regarding claim 18, the Examiner notes that the claim is broadly directed to a support, and the recitation of “laundry appliance” is intended use and not required structural limitations of the claimed support. The structure is fully capable of positioning a laundry appliance a predetermined distance from the floor and therefore the apparatus of UIHLEIN reads on applicant’s claimed support. Re the dependent claims, applicant

states that UIHLEIN does not disclose these limitations. The Examiner disagrees and maintains the rejection of the dependent claims for reasons of record.

Claim Rejections - 35 USC § 102

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 12-16, 20-22, 24 & 28 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,993,786 to DE GIULIO. DE GIULIO discloses a support structure with drawer (12) attached to the structure, a shelf (54) slidably mounted to the drawer in a horizontal configuration, the shelf (54) defining a recessed compartment for receiving removable container/cover (27) which is also a recessed compartment.

6. Claims 12-16, 18-24 & 28 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 7,082,783 to UIHLEIN *et al.* UIHLEIN discloses a support having a structure (14), a horizontally extendable and retractable drawer (26/28), a horizontal recessed shelf (48/70; 70 being removable) in the drawer and cover (66), and a support arrangement (50/52/46) readable on support arms and runners. See particularly Figures 2-3, 5-6 and relative associated text. Regarding the recitations “for a laundry appliance” and “for use with a laundry appliance”, these recitations are a statement of intended use which does not patentably distinguish over UIHLEIN since UIHLEIN meets all the structural elements of the claim(s) and is capable

of supporting a laundry appliance if so desired. See MPEP 2114. Accordingly, recitation of the apparatus in UIHLEIN reads on applicant's claimed apparatus.

Claim Rejections - 35 USC § 103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
8. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE GIULIO. Recitation of DE GIULIO is repeated from the previous rejection. DE GIULIO discloses each and every structural limitation of the claimed apparatus and discloses the use of plastic as structural materials (see col. 3, line 50 *et seq.*) but does not expressly disclose the material of the cover being transparent. However, absent unexpected results the position is taken that it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the cover from common knowledge materials, for instance either transparent or opaque plastics, such being within the level and knowledge generally available to one having ordinary skill in the art.

Allowable Subject Matter

9. Claims 1, 5, 7 & 35-36 are allowed.
10. Claim 25 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: U.S. Patent No. 5,037,165 to RAPP et al., which discloses a drawer with horizontally slidable recessed shelf with cover.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

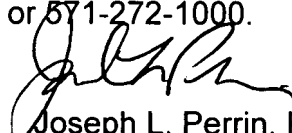
13. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph L. Perrin, Ph.D. whose telephone number is (571)272-1305. The examiner can normally be reached on M-F 7:00-4:30, except alternate Fridays.

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15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael E. Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Joseph L. Perrin, Ph.D.
Primary Examiner
Art Unit 1746

JLP